

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

DIANA MEY,)	
Individually and on)	
behalf of a proposed class,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 5:19-CV-00237-JPB
)	
ALL ACCESS TELECOM, INC.,)	
BANDWIDTH INC.,)	
CENTURYLINK, INC.,)	
d/b/a Lumen Technologies,)	
NOS COMMUNICATIONS, INC., and)	
TELIAX, INC.,)	
)	
Defendants.)	

**DEFENDANT BANDWIDTH INC., CENTURY LINK COMMUNICATIONS, LLC,
LEVEL 3 COMMUNICATIONS, LLC, AND INTELIGENT, INC.'S SURREBUTTAL
TO THE RULE 12(B)(2) MOTION TO DISMISS**

Plaintiff filed a surrepley to Carrier Defendants' (Bandwidth Inc., Century Link Communications, LLC, Level 3 Communications, LLC, and Inteliquent, Inc.) motion to dismiss for lack of personal jurisdiction. *See* Dkt. No. 115. But *Ford Motor Co. v. Montana*, 592 U.S. ___, 2021 WL 1132515 (2021) does not change personal jurisdiction jurisprudence and applies to an entirely different class of cases involving substantial connections between the defendant and forum.

Here, Plaintiff's argument is that this Court has specific jurisdiction over Carrier Defendants. In *Ford*, the Supreme Court confirmed what Carrier Defendants have already argued, *i.e.*, that specific jurisdiction applies to a narrow class of claims, and that Plaintiff must show two things: First, "[t]he contacts must be of the defendant's own choice and not 'random, isolated, or fortuitous.'" *Ford*, 2021 WL 1132515, at *4. Second, the claims "'must arise out of or relate to

the defendant's contacts' with the forum." *Id.* The Supreme Court found those elements present in *Ford*, but they are not present here.

First and foremost, Plaintiff's allegations do not establish purposeful availment, as Plaintiff has not alleged that Carrier Defendants specifically targeted West Virginia. In stark contrast to the facts at-issue here, defendant Ford *admitted and agreed* that it had "purposefully avail[ed] itself of the privilege of conducting activities" in both states. *Ford*, 2021 WL 1132515, at *5 (quoting *Hanson v. Denckla*, 357 U. S. 235, 253 (1958)). Second, the *Ford* Court's holding that claims need not "arise out of" a defendant's actions in a state, at least not in a "causal" way, "does not mean anything goes. In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." *Ford*, 2021 WL 1132515, at *5.

The facts underlying the *Ford* decision show a substantial pattern of activity between Ford and the forum states:

- "Ford did substantial business in [both States]...advertising, selling, and servicing the model of vehicle the suit claims is defective." *Ford*, 2021 WL 1132515, at *3.
- "By every means imaginable—among them, billboards, TV and radio spots, print ads, and direct mail—Ford urges Montanans and Minnesotans to buy its vehicles..." *Id.* at *6.
- "[T]he company distributes replacement parts both to its own dealers and to independent auto shops in the two States." *Id.* at *6.
- "All that assistance to Ford's instate business creates reciprocal obligations—most relevant here, that the car models Ford so extensively markets in Montana and Minnesota to be safe for their citizens to use there." *Id.* at *8.

Here, there are no allegations that Carrier Defendants’ conducted substantial business in West Virginia or that their contacts with West Virginia resemble Ford’s in Montana and Minnesota. In fact, other than the call at issue, there are absolutely no allegations regarding Carrier Defendants’ contacts with West Virginia. Plaintiff has not established either purposeful availment *or* that her claims relate to Carrier Defendants’ actions in West Virginia.

Additionally, Carrier Defendants’ business is strikingly different from Ford’s. Carrier Defendants’ business is much closer to that of companies in the internet space and of those whose apps are available for download nationwide. When assessing whether to assert jurisdiction over those companies, courts have found it unfair to subject those businesses to jurisdiction merely because they made an app available for download nationwide and it was then downloaded in a certain state.¹

The Supreme Court in *Ford* acknowledged this distinction, stating: “we do not here consider internet transactions, which may raise doctrinal questions of their own.” *Ford*, 2021 WL 1132515, at *7 n.4. Like internet app providers, Carrier Defendants merely convey information which may ultimately be routed to any state in the country. They should not be subject to specific jurisdiction just because a call is ultimately directed to a wireless phone number with an area code that corresponds to the forum state. The facts alleged here establish neither of the two elements of specific jurisdiction, and nothing in *Ford* changes that.²

¹ See *Intercarrier Commc’ns LLC v. WhatsApp Inc.*, 2013 WL 5230631 (E.D. Va. Sept. 13, 2013) and *Zaletel v. Prisma Labs, Inc.*, 226 F. Supp. 3d 599 (E.D. Va. 2016).

² This Court also need not consider the *Ford* case as dismissal is warranted based on the Supreme Court’s recent decision in *Facebook v. Duguid*, No. 19-511 (Apr. 1, 2021). Defendant NOS Communications, Inc. describes this case in greater detail in its Notice of Supplemental Authority (Dkt. 116), which Carrier Defendants join.

Dated: April 9, 2021

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DIANA MEY,

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CIVIL ACTION NO.: 5:19-CV-00237-JPB

**ALL ACCESS TELECOM, INC.,
BANDWIDTH INC.,
CENTURYLINK, INC., d/b/a/ Lumen
Technologies,
INTELIQUENT, INC.,
NOS COMMUNICATIONS, INC. and,
TELIAX, INC.,**

Defendants.

CERTIFICATE OF SERVICE

I, M. David Griffith, Jr., counsel for defendant Inteliquent, Inc., hereby certify that on the 9th day of April 2021, I electronically filed the foregoing “**DEFENDANT BANDWIDTH INC., CENTURY LINK COMMUNICATIONS, LLC, LEVEL 3 COMMUNICATIONS, LLC, AND INTELIQUENT, INC.’S SURREBUTTAL TO THE RULE 12(B)(2) MOTION TO DISMISS**” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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